

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

| | | |
|---------------------------|---|----------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | CR. NO. 09-156 |
| |) | |
| vs. |) | |
| |) | |
| SHERMAN ALAN TURNER, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

TRANSCRIPT OF SENTENCING

December 11, 2009

BEFORE: THE HONORABLE GERALD BRUCE LEE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: OFFICE OF THE UNITED STATES ATTORNEY
BY: J. CAM BARKER, ESQ.
JOHN EISINGER, ESQ.
2100 Jamieson Ave.
Alexandria, Virginia 22314

FOR MR. TURNER: OFFICE OF THE FEDERAL PUBLIC DEFENDER
BY: AAMRA AHMAD, ESQ.
TODD RICHMAN, ESQ.

OFFICIAL COURT REPORTER: RENECIA A. SMITH-WILSON, RMR, CRR
U.S. District Court
401 Courthouse Square
Alexandria, VA 22314

1 (Thereupon, the following was heard in open
2 court at 10:02 a.m.)

3 THE CLERK: 1:09 criminal 156, United States
4 versus Sherman Alan Turner.

5 MR. BARKER: Cam Barker and John Eisinger
6 for the United States.

7 THE COURT: Good morning.

8 MS. AHMAD: Aamra Ahmad and Todd Richman on
9 behalf of Sherman Alan Turner who is present.

10 THE COURT: Good morning.

11 MR. TURNER: Sorry, Your Honor.

12 THE COURT: Good morning, Mr. Turner.

13 MR. TURNER: Good morning, sir.

14 THE COURT: Ms. Ahmad, I take it from your
15 submission that you and Mr. Turner reviewed the
16 presentence report?

17 MS. AHMAD: Yes, Your Honor, we have, and we
18 have no objections at this time.

19 THE COURT: All right. I think that the
20 only issue that we did not take up was the motion for
21 downward departure. Did you want to argue that or submit
22 on the papers?

23 MS. AHMAD: A motion for a downward
24 departure in criminal history, Your Honor?

25 THE COURT: Criminal history, yes.

1 MS. AHMAD: One moment, please.

2 THE COURT: Uh-huh.

3 MS. AHMAD: Your Honor, Mr. Richman will be
4 handling that portion of the argument.

5 THE COURT: All right.

6 MR. RICHMAN: Your Honor, I understand at
7 this point given Your Honor's ruling on the legal issue,
8 this is what of a formality, but it does establish the
9 otherwise applicable guideline range were the Court to be
10 sentencing under the Sentencing Guidelines as opposed to
11 the mandatory minimum sentence that the Court has found
12 out applicable.

13 THE COURT: Well, if you'd rather I not
14 address it, I don't have to. I wanted to make sure you
15 had a chance to make your record.

16 MR. RICHMAN: I do think it should be. I
17 think that's accurate that we should make a record.

18 We submit that even when the Court is
19 looking at the otherwise applicable guideline range, that
20 that is still driven entirely by conduct from the early
21 1980s.

22 Both in terms of the offense level and in
23 terms of the criminal history category, Mr. Turner gets to
24 criminal history two as a result of those convictions.

25 The only reason that they count despite

1 being so old is that he served on those until 2000. But
2 at that point, they were -- the latest conviction at that
3 point was 16 years old. It was 25 years old by the time
4 of this offense.

5 I would submit that offense has little to do
6 with how Mr. Turner had lived his life in the nine years
7 between 2000 and 2009. And, therefore, that the Court
8 shouldn't take it into account in determining the
9 guideline range.

10 But here as I said, it's being counted on
11 both parts of the scale. It's being counted in criminal
12 history. It's also being counted in the offense level
13 because one of the ways that the offense level is
14 calculated basically includes looking at the prior
15 offenses for this kind of offense.

16 So, we -- and, in fact, there's not only
17 that. Those convictions are what made his conduct here
18 criminal in the first place. Otherwise, there is not even
19 any criminality here. So it would be zero months but for
20 those offenses. So those offenses are really factoring in
21 three different ways.

22 And so on the motion for downward departure
23 under 4(a)1.3, we would argue that at least the Court
24 should move the otherwise applicable guideline range to
25 category one. That would result in a range of 24 to 30

1 months instead of 27 to 33.

2 THE COURT: Thank you.

3 MR. RICHMAN: Thank you, Your Honor.

4 MR. BARKER: Yes, Your Honor, we would just
5 rest on our brief, specifically page 19 of our position,
6 in which we argue that a downward departure is not
7 appropriate.

8 We would just ask that the Court impose the
9 minimum mandatory sentence of 15 years.

10 THE COURT: All right.

11 Let the record reflect this matter is before
12 the Court for sentencing, that the parties have briefed
13 the matter, and the remaining unresolved objection is a
14 motion for downward departure of criminal history category
15 from criminal history category two to one.

16 Criminal history is an assessment of an
17 offender's prior record. And within criminal law, prior
18 record is deemed to be an important factor in determining
19 what punishment to impose for current offense.

20 In this particular case, the defendant,
21 Mr. Turner is before the Court for possession of a firearm
22 after having been convicted for a crime punishable by more
23 than one year of prison.

24 His prior record is quite lengthy. He has
25 been convicted of ten different charges in the past

1 ranging from theft, larceny from the person, statutory
2 burglary, grand larceny, petty larceny, receiving stolen
3 goods, possession of drug paraphernalia, robbery, use of a
4 firearm which committing a robbery.

5 The last of these offenses occurred in 1984
6 when the defendant was 25 years old. At the time of the
7 offense, the defendant was addicted to drugs.

8 In 1985, he was sentenced to 29 years in
9 prison for armed robbery and use of a firearm while
10 committing a robbery and the defendant spent 15 years in
11 prison. He was paroled in February 2000, and he has been
12 living in our community basically for about ten years
13 without any major crimes.

14 Criminal history category can present
15 problems. And the Court has to determine whether that
16 criminal history here accurately represents the
17 defendant's prior record.

18 The applicable guideline 4(a)1.3 explains
19 that the Court may grant a downward departure from one
20 criminal history category to another where there has been
21 a significant period of time with no intervening criminal
22 behavior and the current offense where the defendant had
23 minor misdemeanor convictions close to ten years prior to
24 the instant offense and there were no criminal behavior in
25 the intervening year.

1 I'm focused on the nature of the prior
2 record, the fact that there is a record that the -- this
3 is the defendant's record. It's an accurate
4 representation of it.

5 Certainly, the Court could take into account
6 on 3553(a) that there have been many years here since his
7 last contact with the law. But I'm of the opinion that it
8 does not overstate the seriousness of his prior record.
9 And therefore, I will deny the motion for downward
10 departure. This is a mandatory minimum case.

11 Mr. Barker, I take it that your last
12 statement was the government's allocution, but if there's
13 more you want to say, now is your time to say it.

14 MR. BARKER: Your Honor, we rest on our
15 papers.

16 THE COURT: All right.

17 Ms. Ahmad, I'll give you a chance to make a
18 statement.

19 MS. AHMAD: We understand that based on the
20 Court's decision on Tuesday, that larceny from the person
21 is a violent felony, that the mandatory minimum here is
22 15 years, and this Court is bound to impose a sentence of
23 at least 15 years.

24 We submit as the government does, that a
25 sentence at the mandatory minimum is appropriate in this

1 case for the reasons stated in our memorandum and in
2 consideration of the 3553(a) sentencing factors.

3 That said, however, the lowest sentence that
4 this Court is authorized to impose in this case is just
5 not justified.

6 Fifteen years is not justified in this case
7 because it is based entirely on Mr. Turner's conduct from
8 25 to 30 years ago. All three of his predicate offenses
9 were committed from 1980 to 1984.

10 Fifteen years is too high of a sentence to
11 pay. Aside from the commission of this offense,
12 Mr. Turner's conduct since his release from incarceration
13 ten years ago proves that he is no longer an armed career
14 criminal. He has been drug free, even when prescribed
15 serious pain killers after his leg amputation. And aside
16 from this offense he has not been involved in any criminal
17 activity.

18 Fifteen years is too high because the
19 sentence gives absolutely no credit for Mr. Turner's
20 decision to plead guilty and to accept responsibility for
21 this offense.

22 The guideline range even with a three level
23 reduction for acceptance of responsibility is below the
24 mandatory minimum.

25 The fact that the government argues in its

1 sentencing memorandum if ACCA does not apply, then the
2 Court can impose a guideline sentence of 27 months to
3 33 months indicates that the government itself does not
4 view Mr. Turner as a present danger.

5 Finally, a substantial number of people in
6 this community have come forward to tell the Court that
7 Mr. Turner is not an armed career criminal and he should
8 not be sentenced as one.

9 He has submitted 18 letters from people in
10 the community saying that. On September 18th, the
11 original date of sentencing, a full courtroom of people
12 were here to say that. And the support is not just from
13 his family. It's also from law enforcement officers and a
14 fire fighter who knows Mr. Turner from the motorcycle
15 club.

16 Since this case was charged, the Office of
17 the Federal Public Defender has reached out to the United
18 States Attorney's Office and supervisors there to explain
19 that Mr. Turner is exactly the kind of defendant who
20 should not be subject to this mandatory minimum because of
21 the age of his predicate offenses and because of his
22 exceptional rehabilitation.

23 In response, the United States Attorney's
24 Office has said that it disagrees that Mr. Turner 's case
25 is exceptional. Instead they believe that Mr. Turner must

1 be charged with the most serious offense that their office
2 can prove.

3 It is my view that the United States
4 Attorney's Office charging decision in this case shows
5 that mandatory minimums can be wrongfully applied.

6 If Mr. Turner's case does not qualify for an
7 exception of the general rule of charging the most highest
8 offense, then I have to ask, what defendant does qualify
9 for that exception?

10 For these reasons, it makes no sense at
11 least -- to spend at least \$100,000 incarcerating
12 Mr. Turner for 15 years. And it will cost that much due
13 to his age, due to the length of the sentence, and due to
14 his impairment.

15 Fifteen years is the mandatory minimum that
16 we typically see in drug cases where firearms are used.
17 It's a mandatory minimum that we see when people produce
18 images of child pornography.

19 Mr. Turner is 50 years old and for him a
20 15-year sentence is a lifetime. This crime is a serious
21 crime, and Mr. Turner does not take that lightly. He
22 understands that it's serious and that a punishment must
23 be imposed. But at the same time, this is a status crime
24 and it is not a violent crime.

25 It is a failure in my view of our criminal

1 justice system that this Court is prohibited from judging
2 Mr. Turner based on who he is today. Instead he is being
3 sentenced today for what he did over 25 years ago.

4 My office is proud to represent Mr. Turner,
5 and we would like to recognize that he has a number of
6 family and friends here today to support him.

7 His mother is here. His wife is here, and
8 there are a number of other friends and family members.

9 THE COURT: Where is his mother? All right.
10 Thank you for coming. Thank you for coming.

11 Thank you for coming, sir.

12 MS. AHMAD: We'd like to tell them that we
13 will continue to represent Mr. Turner on appeal of the
14 legal decision that this Court has made.

15 And, we have been in touch with state court
16 attorneys who, on Mr. Turner's behalf, are challenging in
17 state court his larceny from the person conviction. And I
18 just wanted to say that for the benefit of the family and
19 friends who are here today.

20 THE COURT: All right. Thank you.

21 Mr. Turner, if you'd come to the podium with
22 your lawyers, please.

23 MR. TURNER: Good morning, Your Honor.

24 THE COURT: Good morning, Mr. Turner. Is
25 there any statement you care to make in your own behalf?

1 MR. TURNER: Yes, sir. Ms. Ahmad, put it
2 very well, very well put as to my accomplishments but
3 there is some things I would like to say to the Court.

4 THE COURT: I'm listening.

5 MR. TURNER: First of all, Your Honor, I'd
6 like to thank you for presiding over this case. I think
7 that you were very lenient in letting my lawyers prepare
8 an argument for this particular case. You could have very
9 easily in September said he fits the category. So be it.

10 Again, I'd like to thank you for that. But
11 also I need to apologize to my wife.

12 THE COURT: All right.

13 You can face her. You don't have to face me
14 if you're talking to her.

15 MR. TURNER: Excuse me, Your Honor.

16 THE COURT: Take your time.

17 MR. TURNER: To my wife, Teresa, since I was
18 released from that period of incarceration -- I'm trying
19 to gather myself.

20 Since I was released from that period of
21 incarceration, we met, started this journey to help me
22 reenter society, to be positive, to be a taxpaying
23 law-abiding citizen.

24 For us to be at this point here, baby, I'm
25 utterly sorry. I brought you this far just to leave you

1 out here to fend for yourself, and to take care of our
2 daughter. I apologize.

3 It's very hard, sir. Since my release from
4 prison, again, I worked diligently -- diligently, to
5 reestablish myself in this society. I could have very
6 easily went back to the lifestyle I was accustomed to, to
7 drug uses, to violence, whatever. I chose not to do that.

8 Instead, I was gainfully employed. I went
9 to school for four years. I got my electrician's license.
10 I got my electrician's license since this case has been
11 pending, sir. I supported my wife, my family, and -- I
12 lost my train of thought.

13 I am very remorseful for the situation that
14 I find myself in because had it not been for a brief
15 again, baby, had it not been for a brief attempt at
16 infidelity, I wouldn't even be here, Your Honor.

17 The fact of the matter is I did own and
18 possess that weapon. I had that weapon for my own
19 protection because I fell victim to my ego. My ego told
20 me -- after the amputation of my leg in 2004, that I
21 couldn't adequately defend myself, my property or my
22 family, not that there were any posable threats, except
23 here.

24 I apologize. I had that gun for my
25 protection. Because of the reality of this, I'm an

1 amputee from the waist -- from the thigh down.

2 My 14-year old grandson gave me a stiff
3 shove. I'm on the ground trying to pick myself up. I've
4 always been a maverick man, fight my own battles. I don't
5 want nobody do nothing for me.

6 Even after I lost my leg, if I stumbled and
7 fell, I refuse to let somebody pick me up.

8 Again, I want to express that remorse. I'm
9 very sorry for what I did. I know it wasn't right.

10 Just one more thing, Your Honor. I got a
11 25-year old daughter. My wife -- she has terminal cancer,
12 stage four. They let her out the hospice for all intents
13 and purposes to come home to die. It's not treatable.
14 Chemo is not working. We're making her comfortable in our
15 home.

16 So, I've been the bread winner in the last
17 months. My wife's been staying home nursing my daughter.

18 To leave her out here, this woman is losing
19 a husband and daughter in the same instance, with no fault
20 of her own.

21 I just want to apologize to you again, love.
22 I want to apologize to the Court for putting myself in
23 this position, for being here, for even having to let
24 you -- I'm like the stupidest person that ever stood over
25 here, Your Honor.

1 This is a life sentence for me in all
2 intents and purposes. I'm 50 years old. Do 85 percent of
3 15 years is almost 13 years. Be 63 when I get out.

4 All the things that I worked for, it's gone.
5 Will I have an opportunity to work and get it back, I
6 doubt it. I doubt it very seriously.

7 At 63, to start another career, my career
8 started over three times already, after my period of
9 incarceration, after the amputation of my leg and now,
10 after this period of incarceration, I will be trying to
11 start and forge another career. It's highly unlikely that
12 that will occur, but I will strive for it. It's not like
13 I'm giving up on myself. I'm not going to do that.

14 With that said, Your Honor, I hope that gave
15 you a view of my intellect, my feelings, my heart. And I
16 ask you, Your Honor, to please consider the fact that I
17 have not had a criminal charge since 1984. I had two
18 traffic tickets.

19 And again, had it not been for my attempt at
20 infidelity in that park that night, I wouldn't be here in
21 front of you, sir. But that's said.

22 THE COURT: All right, Mr. Turner, you're
23 before the Court for possession of a weapon, having been
24 convicted of a felony. And you have humbly explained what
25 you've done and why you did it. And I wondered what in

1 the world you were thinking why you needed a weapon.

2 And, I am coming away with the idea that
3 maybe you were not connected with the underworld. I could
4 not tell why you had a weapon. Because all the other
5 information I had about your work record, becoming an
6 electrician, working with the motorcycle club and taking
7 care of your family seemed that you had separated yourself
8 from the underworld.

9 MR. TURNER: And I have, Your Honor, a long
10 time ago.

11 THE COURT: Well, I don't have the power to
12 make a decision about what charges are brought against
13 you, and your criminal record is what it is. It's bad.
14 And, one cannot put that aside lightly in terms of what
15 your prior criminal record was.

16 A sentence here that I have to impose is one
17 called for by the Congress, not by the judge. And it's
18 one that the Congress has decided ought to be applied for
19 those who have prior felony records.

20 And typically, a person with a prior felony
21 record who is back before the Court in this circumstance
22 needs to be separated from us for a very, very long period
23 of time.

24 Your lawyers have been afforded an
25 opportunity and I think they have as you've acknowledged

1 and the government, have had a significant period of time
2 to brief all the legal issues.

3 I've given it as much consideration as I
4 could give it as thoughtfully as I could and considered
5 all the precedents that bind the Court that I have to
6 follow from other circuits, and you will now have an
7 opportunity to have this matter reviewed by the Court of
8 Appeals.

9 So -- and I also want to note that the Court
10 of Appeals will not have the opportunity to see what I saw
11 today, to see what I saw in the initial suppression
12 hearing or to see the support that you have from the
13 community that was present at the last sentencing hearing
14 and to fully appreciate as I do what you've said here
15 about who you are today and how you've lived your life for
16 the last ten years.

17 And it seems to me that if they could see as
18 I do, that you are a person who I think has made a change,
19 a dramatic change, who did a stupid thing for no reason,
20 abandoned his marriage vows and hurt his family, hurt
21 himself in a way that you will have to live with.

22 But this is a situation that you brought out
23 of your own making. So what I'm going to do is this. I'm
24 going to impose a sentence that I'm required to impose
25 which is 180 months in the custody of the Bureau of

1 Prisons and require you to pay \$100 special assessment
2 right away.

3 And I place you on a term of supervised
4 release for a term of five years upon your release from
5 incarceration.

6 You are required to participate in substance
7 abuse testing and treatment at the direction of the
8 probation officer which may include testing.

9 Based upon your financial circumstances, and
10 I make a judgment you do not have the ability to pay any
11 fine or cost of incarceration or cost of supervision, and
12 the \$100 special assessment has to be paid right away.

13 And I will allow you to report to the
14 institution at the time of designation, and no fine will
15 be imposed. Thank you.

16 MS. AHMAD: Your Honor, we would like to
17 request Petersburg in Virginia or alternatively, a
18 facility close to the Northern Virginia area.

19 THE COURT: Northern Virginia, not
20 Cumberland, Maryland?

21 MS. AHMAD: Or Cumberland, Maryland.

22 THE COURT: Then I recommended FCI
23 Petersburg or Cumberland. Obviously, it's not up to me.
24 It's up to the Bureau of Prisons.

25 Thank you.

1 MR. TURNER: Your Honor, I got a question.

2 THE COURT: Yes.

3 MR. TURNER: So, they going to contact me
4 and tell me when to report to the Bureau of Prisons?

5 THE COURT: Yes.

6 MR. TURNER: All right. Thank you, Your
7 Honor. That's what I was going to ask for self surrender.

8 THE COURT: Well, that is self surrender.

9 MR. TURNER: Yes, sir.

10 THE COURT: I'm going to let you have self
11 surrender.

12 Thank you.

13 MR. TURNER: Thank you.

14 THE COURT: I'm going to take about a
15 ten-minute recess and come back to the matter under seal
16 matter. Make it a 15-minute recess.

17 (Proceeding concluded at 10:43 a.m.)

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CERTIFICATE OF REPORTER

I, Renecia Wilson, an official court reporter for the United State District Court of Virginia, Alexandria Division, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had upon the sentencing in the case of United States of America vs. Sherman Alan Turner.

I further certify that I was authorized and did report by stenotype the proceedings and evidence in said sentencing, and that the foregoing pages, numbered 1 to 19, inclusive, constitute the official transcript of said proceedings as taken from my shorthand notes.

IN WITNESS WHEREOF, I have hereto subscribed my name this 18th day of February_, 2010.

Renecia Wilson, RMR, CRR
Official Court Reporter